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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,182	05/14/2001	David A. Fell	659-700	8195

7590

03/09/2005

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/855,182	FELL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-16,18-22,24-39 and 49-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 6-12, 16, 19-20, 32-38, 49-50 and 52-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 5,13-15,18,21,22,24-31,39 and 51 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12-6-04, 8-9-04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 5, 13-15, 18, 21-22, 24-31, 39 and 51 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 9 or 20.

2. With regard to Applicant's 8-9-04 remarks, claims 11 and 16 have been reinstated. Claims 14-15 remain withdrawn in light of the claim language interpretation of the terminology "attached", i.e. like "connected" or "bonded", see discussion infra, and the paragraph at page 18, line 20, third sentence thereof, i.e. these claims do not read on the elected invention and species.

### *Specification*

#### *Drawings*

3. The drawings were received on 8-9-04(pages 1, 6 and 7) and 12-6-04 (page 3). These drawings are not approved by the Examiner because such drawing amendments still do not comply with 37 CFR 1.121 effective 7-30-03. First, the entire section has not been resupplied, i.e. all of sheets 1-8. Second, none of the sheets have not been labeled as replacement sheets.

Applicant's attention is invited to

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/moreinfoamdtprac.htm> for samples.

4. The drawings are objected to because Figure 1 would be in better form if 90 and 70 were shown adjacent edge 66, see Figure 2. In Figure 3, does 86 denote the “body side” surface of the material 44, see discussion of terminology in paragraph 5 *infra*? In Figure 8, the lines from 52 and 54 should be solid. In Figures 16, 17, 19 and 20 there should be no dashed lines. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Description***

5. The disclosure is objected to because of the following informalities: on page 10, line 10, after “54” should --or layer-- be inserted to be consistent? Page 7, lines 3-14 define certain terms with respect to the body and a garment( Note the garment is indicated as 2 and the

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structure known as 2 is shown in Figure 8) including the terms “inner” and “upper” and “outer” and “lower”, respectively. The elected species as shown in Figures 18-19 includes one of a first or second portion formed on a surface of the cover, adjacent 346, which is lower than a surface of the cover opposite that portion, i.e. would be considered “outer” or “garment side”, but then the other one of such portions is formed on a surface of the cover, adjacent 52, 54, which is above a surface of the cover opposite that portion, i.e. would be considered “inner” or “body side”. However, the claims, which Applicant considers to read on such species, define the portions as both being formed on the “outer” side of the cover sheet, i.e. defined as that side of the cover sheet closest to the garment or the “garment side”. However in the species of Figures 18-19 both the surfaces of the cover sheet are positioned outside the chassis, i.e. one surface is both the closest to the body and the garment as best understood, i.e. one surface is both the “body side” and the “garment side”. See also, e.g., discussion with respect to Figure 3 supra and page 19, line 24 and Applicant’s remarks in the 8-9-04 response with regard to such terms. In other words it is unclear how the surfaces of the various elements and portions are being determined as being “body side” or “garment side”. The use of the terminology “body side” and “garment side” throughout the description, claims and Figures should be clear and consistent. Since the absorbent element can be connected to either surface of the chassis depending on the embodiment, shouldn’t the “body side” surface be defined as that closest to the body whereas the other surface is the surface opposite the “body side” rather than “garment”, “lower” or “outer” “side”?

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claims 1, 3-4, 6-12, 16, 19-20, 32-38, 49-50 and 52-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As discussed supra the claims are indefinite because it is unclear what is the direction the directional terminology refers to, i.e. what considered “body side”, “inner” and “upper” and what is considered “outer”, “lower” and “garment” side.

***Claim Language Interpretation***

7. Directional terms, as best understood, are defined as set forth on page 7, lines 3-14. Due to the lack of clarity discussed supra, the “body side”, “inner” or “upper” surface will be considered the surface of the element from side edge to side edge most immediately adjacent the body in Figure 19 at the side edge and the “outer”, “lower” or “garment side” will be considered the entire surface from side edge to side edge opposite such “body side” surface. The terms “outer cover”, “back sheet” and “barrier” are considered to be usable interchangeably, see page 8, lines 1-3 and page 9, lines 1-3. “Extensible” is defined as set forth on page 22, lines 1-3. The terms “location”, “fixedly”, “fixedly detachable” and “fixedly detachably connected” are defined as set forth on pages 14, 15 and 19. As already discussed, the terminology “connected” and “bonding” is interpreted as including indirect or direct connections. It is also noted that the “wherein” clause of claim 1 does not require detachment due to expansion only occurring when there is expansion of the absorbent material. Also such clause does not require detachment due

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to detachment of the connection. Claims 16 and 37, as set forth infra, do not require that there be no crotch portion other than the absorbent element which spaces the panels.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3-4, 6-12, 16, 19-20, 32-38, 49-50 and 52-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Houghton et al '711.

Claims 1, 19-20 and 53: see Claim Language Interpretation section supra, Figures, the paragraph bridging cols. 2-3, col. 3, lines 37-43 and 60-64, col. 4, lines 13-22, 40-42 and 46-62, the sentence bridging cols. 4-5, col. 5, lines 30-51, col. 6, lines 17-29 and 33-35, col. 7, lines 42-64, col. 10, lines 22-34, col. 16, lines 58-62, col. 17, lines 18-26, col. 17, line 34-col. 18, line 40, i.e. the chassis is the panty or undergarment referred to in col. 4, lines 56-59 or sheet 22, the absorbent element is either 20 where the connection at the first location to the “garment side” surface of the chassis, i.e. the panty or undergarment, is indirect or is 26 and 24 where the connection at the first location to the “garment side” surface of the chassis, i.e. sheet 24, is direct, the first location is adjacent 32 when the first location connection is indirect or is adjacent 76 when the first location connection is direct, the absorbent material is at least a portion of 26, the cover sheet is at least the layer 24, the second location is adjacent 72, 74 and the first and second portions are the “outer” surfaces of the pleats or shelves 58, 60 of the cover sheet 24 which are

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connected, see again discussion of the terminology “connected” or “bonding” supra and the claim language which does not require direct connection or bonding of the “outer” or “garment side” surfaces of such portions . With regard to the preamble and “wherein” clause of claim 1, see portions already cited.

Claim 3: see portions of Houghton cited supra, i.e. the primary bond is 32 or 76, see Claim Language Interpretation section supra, and the secondary bond is 72, 74. The secondary bond detaches during use but the primary bond does not, i.e. the primary bond is stronger than the secondary bond during use.

Claim 4: element 22 when the first location connection is indirect or col. 9, lines 1-4 and 21-33 when the first location connection is direct, i.e. the upper tissue layer of the combination particle/tissue absorbent core or the upper sheet or web of a laminate of multiple sheets or webs forms the claimed topsheet.

Claims 6-7 and 9: see Figures, adjacent elements 32 (indirect connection) or 76 (direct connection) and adjacent elements 72, 74 and the portions of cols. 7, 10, 16 and 17-18 cited supra. It is noted that such regions defined by 76, 72 and 74 have a length and width.

Claim 8: when the chassis is considered 22, i.e. the direct connection, then the first location is adjacent 76 on both sides and the second location is 72, 74, see portions cited supra and Figures.

Claims 10-11: see Claim Language Interpretation section supra, Figures, portions of ‘711 cited with respect to claims 6-7 and 9 supra, and element 56, i.e. the absorbent element ends are connected to the chassis at the first location at least indirectly by the connection between the



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chassis and the cover sheet which connection includes the longitudinally outermost portion of 56 which is spaced from the second location adjacent 72,74 shown at Figure 1 along line 2-2.

Claim 12: See elements 26, 58, 60, 62 and 64.

Claim 16: see Claim Language Interpretation section *supra*, i.e. the undergarment (indirect connection) or diaper/incontinent briefs (direct connection), see col. 4, lines 59-62, panty has spaced apart panels and the absorbent element 20 (indirect connection) or 24, 26 (direct connection) is connected to each, at least indirectly, via the crotch portion with the primary bond 32 or 76. It is noted that the claim language does not require direct bonding or no crotch portion except for the absorbent element.

Claim 49: element 32 forms a fixedly detachable indirect connection when the chassis is the undergarment, see Claim Language Interpretation section *supra*.

Claim 50: see at least element 34 at col. 127, lines 7-10. It is noted that the claim does not require any specific dimension of the outer cover relative the cover, i.e. not required to entirely cover such.

Claims 32-38, 52 and 54: see discussion of claims *supra*. Additionally the primary bond region is the extent of element 32 (indirect connection) or 76 (direct connection), and the secondary bond region is the extent of 72,74.

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*Response to Arguments*

10. Applicant's remarks have been considered but are either deemed moot in that the issue argued has not been reraised or are deemed not persuasive for the reasons set forth supra.

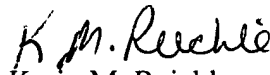
*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Houghton et al '896 reference also teaches the claimed invention.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
March 2, 2005